

CALIFORNIA COASTAL COMMISSION

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Filed: August 25, 2006
49th Day: October 13, 2006
Staff: Gary Cannon-SD
Staff Report: September 27, 2006
Hearing Date: October 11, 2006

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved with Conditions

APPEAL NO.: A-6-ENC-06-101

APPLICANT: Salvatore Albani

PROJECT DESCRIPTION: Demolish an existing single-family residence and construct an approximately 3,962 sq. ft. two-story single-family residence on an approximately 25,832 sq. ft. blufftop lot.

PROJECT LOCATION: 629 Fourth St., Encinitas, San Diego County.
APN No. 258-151-23

APPELLANT: Commissioners Patrick Kruer and Steve Padilla

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program; Appeal Applications by Commissioners Patrick Kruer and Steve Padilla dated 8/25/06; City of Encinitas Case #05-068/DR/CDP; "Report of Preliminary Geotechnical Investigation" by Christian Wheeler Engineering dated 6/14/04; "Response to Initial Review of Application for a Design Review and Coastal Development Permit" by Christian Wheeler dated 1/30/06.

I. Appellant Contends That: The City's decision is inconsistent with several provisions of the City's LCP which require that new development on the blufftop be supported by a site-specific geotechnical report that addresses the necessary bluff edge setback based on overall site stability and the potential need of shoreline protection over the lifetime of the

development. In addition the appellants contend the City failed to require that the bluff face seaward of the proposed residence be protected through the application of an open space easement or comparable measure as required by the LCP. The appellants also assert that the proposed development will occur on an illegally created lot in that a coastal development permit was never obtained for a lot merger that occurred in 1990.

II. Local Government Action: The coastal development permit was approved by the City of Encinitas Planning Commission on July 20, 2006. Specific conditions were attached which, among other things, prohibit bluff protection for any improvements located within 40 ft. setback area; a requirement that threatened improvements within the 40 ft. setback area be removed when bluff edge retreats to within 1 foot of an improvement and that they be relocated eastward in 10 ft. increments; and a requirement that an existing chain link fence and post within 5 ft. of the bluff edge be cut and removed unless cutting of posts will adversely affect bluff stability, then only the chain link portion shall be removed.

III. Appeal Procedures. After certification of a municipality's Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit applications. One example is that the approval of projects within cities and counties may be appealed if the projects are located within mapped appealable areas. The grounds for such an appeal are limited to the assertion that "development does not conform to the standards set forth in the certified local coastal program or the [Coastal Act] public access policies." Cal. Pub. Res. Code § 30603(b)(1). Where the local government action is approvable on the basis that the project is located between the sea and the first public road paralleling the sea or within 300 ft. of the mean high tide line, the grounds are limited to those contained in Section 30603(b)(1) of the Coastal Act.

After the local government has taken final action on an appealable project, it must send a notice of that final action (NOFA) to the Commission. Cal. Pub. Res. Code § 30603(d); 14 C.C.R. § 13571. Upon proper receipt of a valid NOFA, the Commission establishes an appeal period, which runs for 10 working days. Cal. Pub. Res. Code § 30603(c); 14 C.C.R. § 13110 and 13111(b). If an appeal is filed during the appeal period, the Commission must "notify the local government and the applicant that the effective date of the local government action has been suspended," 14 C.C.R. § 13572, and it must set the appeal for a hearing no later than 49 days after the date on which the appeal was filed. Cal. Pub. Res. Code § 30621(a).

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal of the sort involved here unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed to a de novo hearing on the merits of the project, either immediately or at a later date, with the hearing held open in the interim.

If the staff recommends “no substantial issue” or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If a substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project either immediately or at a subsequent meeting. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Coastal Act requires that, for a permit to be granted, a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-06-101 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-6-ENC-06-101 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. The development, as approved by the City, involves the demolition of an existing single-family residence and detached garage, and construction of an approximately 3,962 sq. ft. two-story single-family residence that includes an approximately 366 sq. ft. attached garage on an approximately 25,832 sq. ft. blufftop lot. The existing residence is located at approximately 25 ft. from the bluff edge at its closest point and the new residence is proposed to be setback to approximately 46 ft. from the bluff edge. In addition, the second floor will be cantilevered approximately 9 ft., 2 in. into the required 46 ft. geologic setback area (as determined by the applicant's geotechnical report). At grade improvements approved within the 46 ft. geologic setback area include landscaping, drainage pipes, catch basin, decomposed granite walkway, and a six-foot gate.

The existing single-family residence was constructed prior to enactment of the Coastal Act. Although the subject approximately 25,832 sq. ft. lot was created in 1990 with the merger of three lots and a portion of a fourth, no coastal development permit was ever approved by the Commission or subsequently by the City of Encinitas (following its implementation of the Certified LCP in May of 1995) for the lot merger.

The subject site is located on the west side of an unimproved section of Fourth St., approximately one lot south of E St. and approximately two blocks south of the Moonlight Beach Park in the City of Encinitas.

2. Geologic Stability. Section 30.34.020(D) of the Implementation Plan states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;

2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. Any other factors that might affect slope stability;
11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- Cover all types of slope failure.

- Demonstrate a safety factor against slope failure of 1.5.
- Address a time period of analysis of 75 years.

[. . .] (Emphasis added)

In addition, Public Safety (PS) Policy 1.3 of the City's LUP requires that:

The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

In addition, PS Policy 1.6 of the LUP requires that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[. . .]

Requiring new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge, and 40 feet from coastal blufftop edge with exceptions to allow a minimum coastal blufftop setback of no less than 25 feet. For all development proposed on coastal blufftops, a site-specific geotechnical report shall be required. The report shall indicate that the coastal setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal structure within its economic life and with other engineering evidence to justify the coastal blufftop setback. (Emphasis added)

The project approved by the City is located within the Coastal Bluff Overlay Zone and the residence will be sited approximately 46 ft. from the edge of an approximately 90 ft.-high coastal bluff subject to marine erosion. The appellants assert that the geotechnical report prepared for the subject development was inadequately prepared such that it cannot be determined if the proposed geologic setback of 46 ft. is adequate to meet the standards of the Section 30.34.020(D) of the City's certified IP.

As cited above, Section 30.34.020(D) requires that many factors be analyzed within the geotechnical report for new development on the blufftop including an estimate of the long-term erosion rate at the site. The geotechnical report prepared by the applicant has identified a site-specific estimate of the long-term erosion rate and found it to be approximately 0.24 ft. per year. The Commission's staff geologist has reviewed this report and concurs with this site-specific estimate.

However, in order to find the appropriate geologic setback for the blufftop home, the Certified LCP requires not only that a long-term erosion rate be adequately identified but

also that the geotechnical report demonstrate that an adequate factor of safety against slope failure, i.e., landsliding, of 1.5 will be maintained over 75 years. In this case, the appellants assert that the geotechnical report approved by the City only identified the 1.5 factor of safety under present conditions. The Commission's staff geologist has reviewed the appellants' assertions and the geotechnical reports prepared by the applicants' representative, which were relied on by the City. Based on this review, the Commission's staff geologist has determined that the applicant's geotechnical report has not adequately demonstrated a setback that will prevent reasonable risk of damage within the economic life of the principal structure (see PS Policy 1.6). In order to find the appropriate geologic setback, the above-cited LCP provisions require not only that an adequate factor of safety against landsliding be shown under present conditions, but also that it addresses stability over 75 years (See IP section 30.34.020(D)). Therefore, in estimating an appropriate setback for new blufftop development, it is necessary to first estimate the configuration of the bluff 75 years from now. The simplest way to accomplish this is to assume that the bluff will have the same topographic configuration as at present, but the entire bluff will have migrated landward due to coastal bluff retreat. Applying the site-specific historical long-term average bluff retreat-rate of 0.24 ft/yr, this would mean that the bluff would be 18 ft. landward of its current location. Next, it must be demonstrated that the site would have a factor of safety against landsliding of 1.5 or greater. For instance, in this case, if the location of the 1.5 factor of safety for current conditions of 46 ft. (as identified by the applicant's geotechnical report under current conditions) were added to the estimated bluff erosion over 75 years, the Commission's staff geologist would recommend a geologic setback of approximately 64 ft. from the edge of the bluff. In this case, the City only required a setback of 46 ft., which appears to be an insufficient distance to assure the new home is safe from erosion such that it will not need shoreline protection over its lifetime. Thus, based on a review of the geotechnical information by the Commission's staff geologist, the appellants have raised a substantial issue.

A second issue raised by the appellants involves the conservation of the bluff face seaward of the proposed development with the application of an open space easement or other device so as prohibit future shoreline protective measures from being installed. Public Safety Policy 1.6 of the City's Land Use Plan requires, in part, that:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[. . .]

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

[. . .]

The appellants contend that the City should have required the use of an open space easement over the bluff face that is owned by the applicant. As cited above, PS Policy

requires the City prevent unnatural causes of bluff erosion, by among things, protecting the bluff face by conserving it within an open space easement or other “suitable device”. By placing the bluff face within an open space easement the property owner and any future owner would be advised that no future development such as a shoreline protective device could ever be constructed on the bluff face. Alternatively, the City could have required as an “alternative device” that the applicant waive their right to construct shoreline protective devices to protect the proposed development. However, in this case, the City failed to require that the bluff face owned by the applicant be placed within an open space easement or other device to assure that the applicant or any future owner acknowledges that the area cannot be used for future shoreline protection. Therefore, the appellants have raised a substantial issue.

Finally, the appellants assert that the proposed lot on which the City approved the development to occur is an illegal lot. Specifically, the appellants identified that in 1990 the City of Encinitas issued a Certificate of Compliance for the merger of three adjacent lots, a portion of a street vacation and a portion of another lot in order to create the subject approximately 25,832 sq. ft. parcel. Lot mergers are considered development under both the Coastal Act and the City of Encinitas Certified LCP. In 1990, the Coastal Commission had permit jurisdiction over the subject property. After May 15, 1995, the City began implementation of its Certified LCP and, thereby, obtained coastal permit jurisdiction over the property. However, the lot merger never received a coastal development permit from either the Commission or the City. Therefore, the appellant’s contention that the City approved development on an illegal lot appears to be correct and raises a substantial issue.

In summary, based on the information relied on by the City, it appears that an insufficient geologic setback may have been approved such that the approved home may not be safe from erosion and bluff retreat over 75 years and thus, may require shoreline protection at some point over its lifetime, which would be inconsistent with Section 30.34.020(D) of the City’s certified IP. In addition, as required by PS Policy 1.6 of the LUP, the City should have required the bluff face that is owned by the subject applicant be placed within an open space easement or other device (such as a waiver of the right for future shoreline protective devices to protect the new residence) which would prohibit any future use of the bluff face for shoreline protective devices. Finally, the City should have not approved new development on an illegal lot or should have processed a coastal development permit for the lot merger before approving new development on the lot. Therefore, the City’s action raises a substantial issue regarding consistency with the requirements of the LCP as asserted by the appellants.

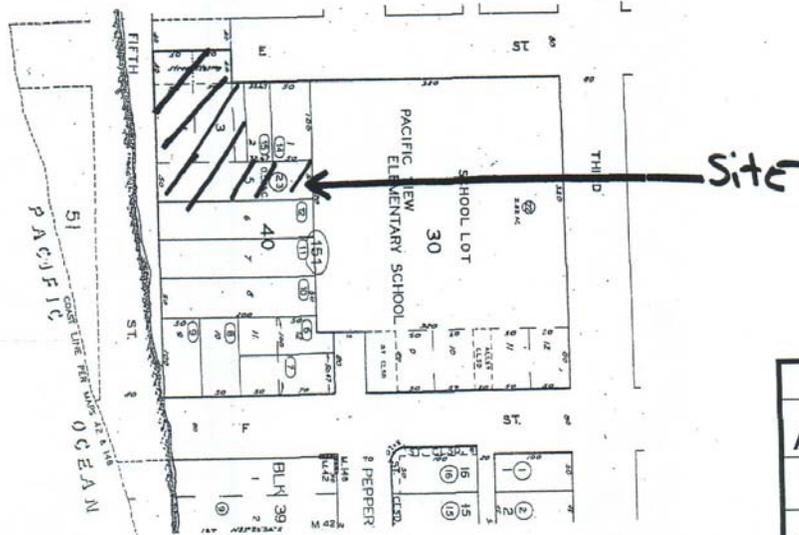
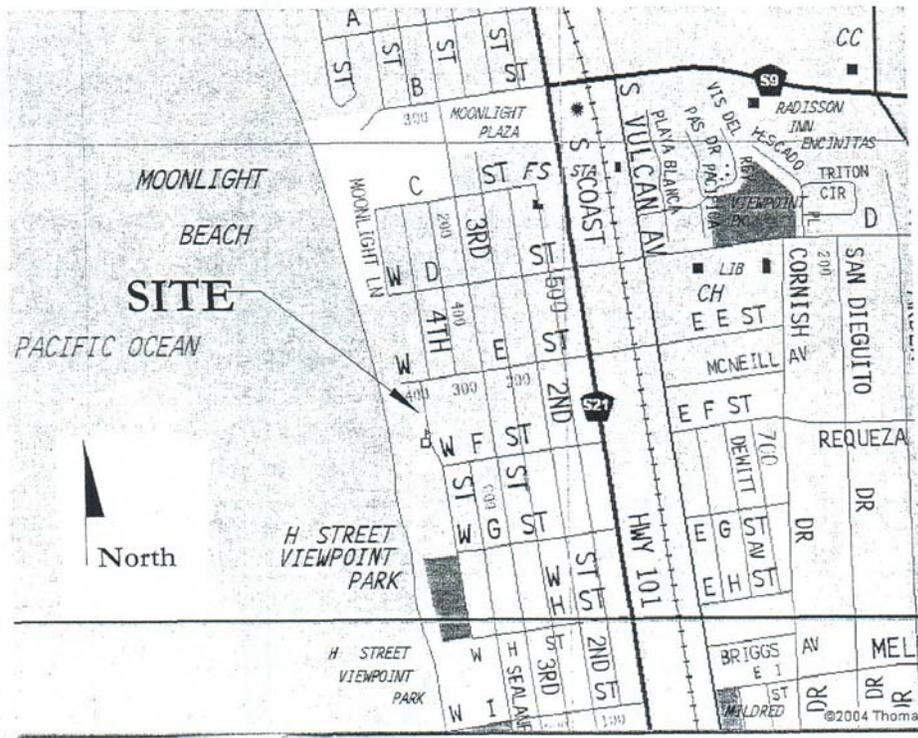
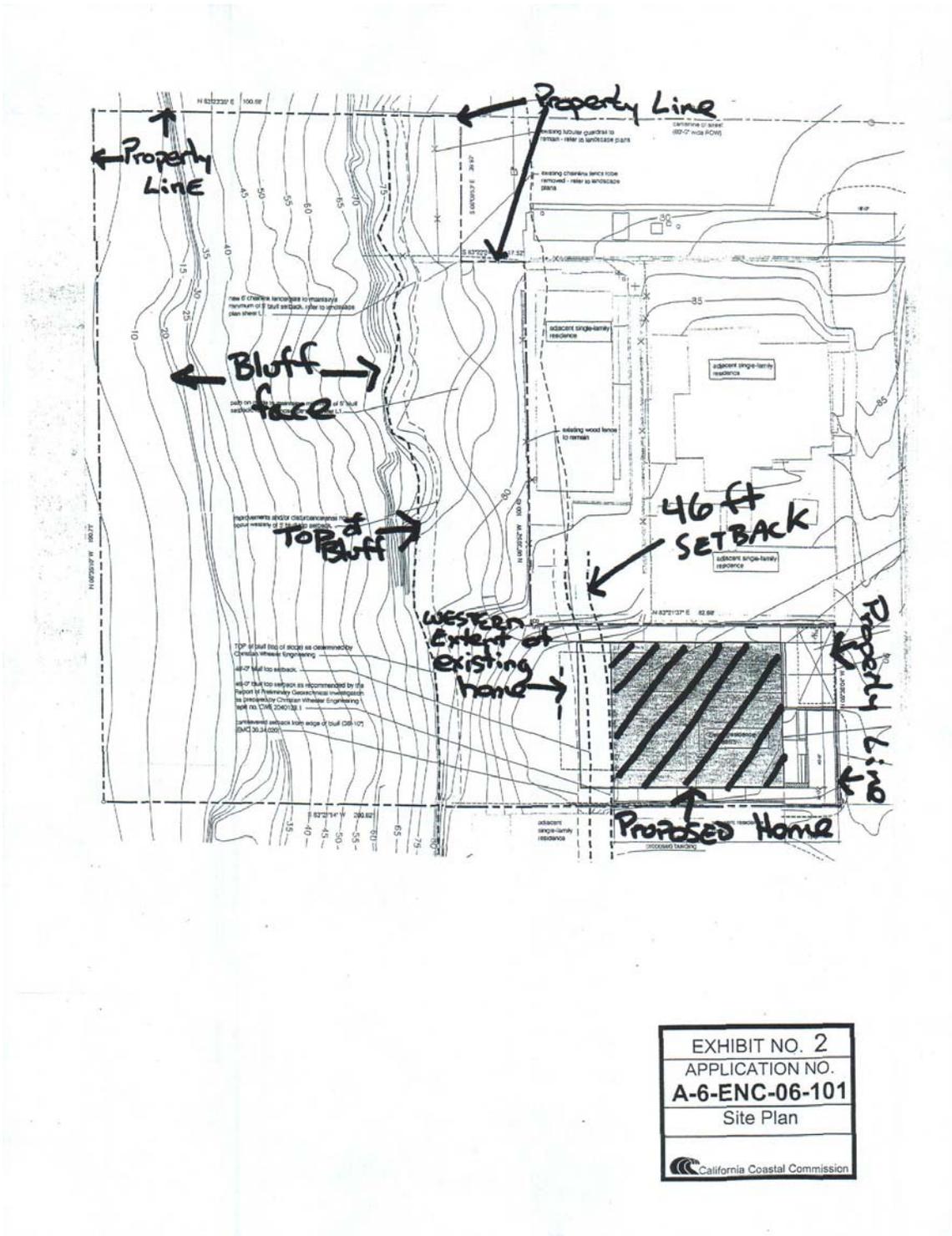


EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-06-101
Location Map

California Coastal Commission



RESOLUTION NO. PC 2006-34

A RESOLUTION OF THE CITY OF ENCINITAS PLANNING COMMISSION APPROVING A DESIGN REVIEW PERMIT AND COASTAL DEVELOPMENT PERMIT FOR THE DEMOLITION OF AN EXISTING SINGLE-STORY SINGLE FAMILY DWELLING AND THE CONSTRUCTION OF A NEW TWO-STORY SINGLE FAMILY DWELLING WITH A SECOND STORY COVERED DECK/BALCONY ELEMENT WHICH CANTILEVERS 9-FEET, 2-INCHES INTO THE RECOMMENDED 46-FOOT COASTAL BLUFF SETBACK ON AN EXISTING LEGAL LOT LOCATED WITHIN THE D-R15 (RESIDENTIAL-15) ZONING DISTRICT IN THE DOWNTOWN ENCINITAS SPECIFIC PLAN, THE COASTAL APPEAL ZONE, AND THE COASTAL BLUFF OVERLAY ZONE, FOR THE PROPERTY LOCATED AT 629 FOURTH STREET

(CASE NO. 05-068 DR/CDP; APN: 258-151-23)

WHEREAS, a request for consideration of a Design Review Permit and Coastal Development Permit was filed by Hector Magnus on behalf of Salvatore Albani to allow the demolition of an existing single-story single family residence and the construction of a new two-story single family residence with a second story deck/balcony element of the structure to cantilever 9-feet, 2-inches into the recommended 46-foot coastal bluff setback, in accordance with Chapters 30.34 (Special Purpose Overlay Zones) and 30.80 (Coastal Development Permit) of the Encinitas Municipal Code, for the property located within the D-R15 (Residential 15) Zoning District in the Downtown Encinitas Specific Plan and the Coastal Bluff Overlay Zone, legally described as:

LOTS 2, 3, 4 AND 5 IN BLOCK 40 OF ENCINITAS, IN THE CITY OF ENCINITAS, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 148 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MAY 12, 1883, TOGETHER WITH THAT PORTION OF THE SOUTHERLY HALF OF E STREET ADJOINING SAID LOTS 3 AND 4 ON THE NORTH AS VACATED.

EXCEPTING THEREFROM SAID LOT 2 THE EASTERLY 32.67 FEET.

ALSO EXCEPTING THEREFROM ALL THAT PORTION, IF ANY, LYING BELOW THE MEAN HIGH TIDE LINE OF THE PACIFIC OCEAN.

WHEREAS, the Planning Commission conducted a noticed public hearing on the application on July 20, 2006, at which time all those desiring to be heard were heard; and

WHEREAS, the Planning Commission considered, without limitation:

1. The July 20, 2006 agenda report to the Planning Commission with attachments;
2. The General Plan, Local Coastal Program, Municipal Code, Downtown Encinitas Specific Plan, and associated Land Use Maps;
3. Oral and written evidence submitted at the hearing;



- 4. Project drawings consisting of eleven (11) sheets, including Data Sheet, Demolition Plan, Site Plan, Floor Plans (3 sheets), Roof Plan, Exterior Elevations (2 sheets) and Building Sections; Landscape and Irrigation Plans consisting of four (4) sheets; Conceptual Grading Plan consisting of one (1) sheet; all stamped received by the City of Encinitas on June 21, 2006; and

WHEREAS, the Planning Commission made the following findings pursuant to Chapters 30.34 (Special Purpose Overlay Zones) and 30.80 (Coastal Development Permit) of the Encinitas Municipal Code:

(SEE ATTACHMENT "A")

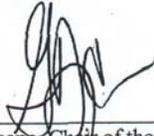
NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Encinitas hereby approves application No. 05-068 DR/CDP subject to the following conditions:

(SEE ATTACHMENT "B")

BE IT FURTHER RESOLVED that the Planning Commission, in its independent judgment, finds that this project is categorically exempt from environmental review pursuant to Sections 15301(l)(1), 15301(l)(4) and 15303(a) of the California Environmental Quality Act (CEQA) Guidelines, which categorically exempt the demolition of up to three single-family dwelling units and accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences, and the construction of a new single family residence.

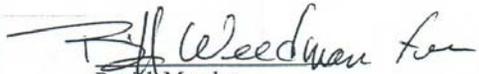
PASSED AND ADOPTED this 20th day of July, 2006, by the following vote, to wit:

- AYES: Avis, Chapo, Felker, McCabe & Snow
- NAYS: None
- ABSENT: None
- ABSTAIN: None



Gene Chapo, Chair of the Encinitas Planning Commission

ATTEST:


 Patrick Murphy
 Secretary

NOTE: This action is subject to Chapter 1.04 of the Municipal Code, which specifies time limits for legal challenges.

ATTACHMENT "A"
Resolution No. PC 2006-34
Case No. 05-068 DR/CDP

Bluff Setback and Cantilever Portion of a Structure Determination:

The criteria required to be considered in order to approve construction on the coastal bluff maintaining the standard 40 foot setback have been addressed by the Preliminary Geotechnical Investigation dated June 14, 2004, and Response to Third Party Geotechnical Review dated January 30, 2006, prepared by Christian Wheeler Engineering (Report No. CWE 2040129.1). The geotechnical reports were reviewed by a third party geotechnical consultant, Geopacifica, which found that said geotechnical reports provide information to adequately meet the standards of the City of Encinitas Municipal Code, Section 30.34.020C and D. According to the results of the slope stability analyses and estimate of 75-year bluff top retreat, Christian Wheeler recommended that in accordance with the currently recommended guidelines of the Coastal Commission, a 46-foot bluff top setback be applied to the proposed project instead of the minimum required 40-foot bluff setback pursuant to Section 30.34.020B of the City of Encinitas Municipal Code. The project includes a second story covered deck/balcony which cantilevers a maximum of 9-feet, 2-inches into the recommended 46-foot bluff setback. The issue of the cantilever portion of the structure was addressed in the above cited reports by Construction Testing and Engineering, Inc. and said reports were reviewed and accepted by the third party geotechnical consultant. As noted in the project geotechnical report and by separate statement, the cantilever portion of the structure will not adversely surcharge the bluff area.

FINDINGS FOR ALLOWING A PORTION OF A STRUCTURE TO CANTILEVER INTO THE COASTAL BLUFF SETBACK:

STANDARD: In accordance with Sect. 30.34.020 C.(1) of the Municipal Code, the authorized agency must make the following findings of fact, based upon the information presented in the application and during the Public Hearing, in order to approve a project to cantilever:

1. No private or public views would be significantly impacted by the construction of the cantilevered portion of the structure.

Facts: Pursuant to Section 30.34.020C.1 of the Municipal Code, a second story cantilevered portion of a structure is permitted 20% beyond the top edge of coastal bluff setback, if demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area and if a finding can be made that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure. The project application includes a second story cantilevered terrace/balcony to encroach 9-feet, 2-inches into the recommended 46-foot coastal bluff setback.

Discussion: As noted in the project geotechnical report, which was reviewed and accepted by the City's Third Party Geotechnical Consultant, the foundations for the structure, which includes the loading for the cantilevered balcony/deck, will not adversely surcharge the bluff area. Additionally, the project architect has submitted a written statement dated March 31, 2006, noting that the project could be moved, either as a unit or as structurally separable units if threatened by bluff erosion in the future. This in no way represents a commitment on the part of the owner or owner's successors to remove the structure at any time.

Though the project site lies directly adjacent to the south of the terminus of the E Street right-of-way public overlook area, public views will not be negatively affected by the 9-foot, 2-inch cantilever element. The proposed residential structure, including the cantilever element, will sit further back from the bluff than the existing single family residence and the six-foot fence proposed along the project site's northern and southern property lines will be constructed up to 58 feet and 46 feet, respectively, from the bluff edge. The existing residences immediately to the north and south of the project site already project out further to the west than the proposed project cantilever, therefore no negative impact on their respective northward and southward views would occur. The proposed project's cantilever element is the same width as the main residence and would not be visible from properties to the east across Fourth Street. Thus no private or public views would be significantly impacted by the construction of the second story cantilevered deck/balcony element of the structure.

Conclusion: Therefore, the Planning Commission finds that the proposed cantilever portion of the structure will not significantly impact any existing private or public views.

FINDINGS FOR A COASTAL DEVELOPMENT PERMIT

STANDARD: Section 30.80.090 of the Municipal Code provides that the authorized agency must make the following findings of fact, based upon the information presented in the application and during the Public Hearing, in order to approve a coastal development permit:

1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.

Facts: The project proposes the demolition of an existing single-story single family dwelling and the construction of a new two-story single family dwelling, which maintains a 46-foot setback from the top edge of the coastal bluff. The new residence also includes a second story deck/balcony cantilevered 9-feet, 2-inches into the 46-foot coastal bluff setback. The 46-foot coastal bluff setback as opposed to the standard 40-foot bluff setback was recommended by the project geotechnical engineer Christian Wheeler Engineering. The project site does not currently provide access to the shore, and the project does not propose any public access or public recreational facilities. Policy 1.6 of the Public Safety Element of the General Plan stipulates that all new construction shall be designed and constructed such that it could be removed in the event of endangerment and the applicant shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

Discussion: In conformance with Policy 1.6 of the Public Safety Element of the General Plan, the applicant has submitted a statement noting that they agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City, additionally a statement was submitted from the project architect noting that the project could be moved, either as a unit or as structurally separable units. This in no way represents a commitment on the part of the owner or owner's successors to remove the structure(s) at any time. With authorization to construct the second story cantilever, the project is in conformance with the development standards of the Downtown Encinitas Specific Plan, Municipal Code, the General Plan and the Local Coastal Program. The project will not cause significant negative impacts to the surrounding area and the project will not adversely impact public coastal access.

Public access or public recreational facilities are not feasible given the project site's conditions as a blufftop residential property. The existing public access to the shore and recreation facilities on D Street, two blocks north of the subject property, adequately provides these amenities for the area. This existing public access will not be adversely affected by the proposed single family development. Since there was not public access through the subject property prior to this application, the ability of the public to access the shore is not adversely impacted with this application.

Conclusion: Therefore, the Planning Commission finds that 1) the project is consistent with the certified Local Coastal Program of the City of Encinitas, 2) required finding No. 2 is not applicable since no significant adverse environmental impact is associated with the project, and 3) the providing of public access or recreational facilities is not feasible or appropriate for a project of this scale and adequate existing public access is immediately available via the existing nearby D Street public beach access.

ATTACHMENT "B"
Resolution No. PC 2006-34
Case No. 05-068 DR/CDP

Applicant: Salvatore Albani.

Location: 629 Fourth Street (APN: 258-151-23).

SC1 **SPECIFIC CONDITIONS:**

SC2 At any time after two years from the date of this approval, on July 20, 2008 at 5:00 pm, or the expiration date of any extension granted in accordance with the Municipal Code, the City may require a noticed public hearing to be scheduled before the authorized agency to determine if there has been demonstrated a good faith intent to proceed in reliance on this approval. If the authorized agency finds that a good faith intent to proceed has not been demonstrated, the application shall be deemed expired as of the above date (or the expiration date of any extension). The determination of the authorized agency may be appealed to the City Council within 15 days of the date of the determination.

SC5 This project is conditionally approved as set forth on the application and project drawings consisting of eleven (11) sheets, including Data Sheet, Demolition Plan, Site Plan, Floor Plans (3 sheets), Roof Plan, Exterior Elevations (2 sheets) and Building Sections; Landscape and Irrigation Plans consisting of four (4) sheets; Conceptual Grading Plan consisting of one (1) sheet; all stamped received by the City of Encinitas on June 21, 2006, all designated as approved by the Planning Commission on July 20, 2006, and shall not be altered without express authorization by the Planning and Building Department.

SCA To the satisfaction of the Engineering Services Department, the applicant shall comply with the following conditions:

1. The section of Fourth Street fronting the property is unpaved and in poor condition. The applicant shall provide full-width gravel surfacing of the street along the easterly property boundary to the satisfaction of the City Engineer. The gravel surface shall be required along the full width of Fourth Street along the property frontage and extending northerly to E Street.
2. The applicant shall submit a precise grading plan to the Engineering Department prior to the issuance of any building permit for the project. The precise grading plan shall include existing and proposed contours, drainage, and hardsurface areas. The plan shall also include all landscape areas for storm water pollution control Best Management Practice (BMP). All BMP areas shall be designated with a shading symbol clearly showing the extent of the areas and shall be labeled as "Landscape areas for storm water pollution control BMP to be privately maintained and not to be modified without a permit from the City". The storm water pollution control BMPs shall be designed and approved prior to issuance of any grading or building permit for the project.

SCB To the satisfaction of the San Dieguito Water District, the applicant shall comply with the following conditions:

1. The applicant shall show all existing and/or proposed water facilities on the improvement or grading permit plans for San Dieguito Water District approval.
2. The applicant shall comply with the San Dieguito Water Districts fees, charges, rules and regulations.
3. All water meters shall be located in front of the parcel they are serving and outside of any existing or proposed travel way. Cost of relocation shall be the responsibility of the property owner and/or developer.

SCC As agreed to by the applicant/project architect, no bluff protection for improvements within the recommended 46-foot coastal bluff setback, including the rear yard deck shall be authorized if said improvements are threatened in the future. Additionally, the improvements shall be monitored and planned retreat of the minor accessory structures shall occur with bluff erosion. When the bluff edge erodes to a point which is within one foot of an improvement, affected improvements shall be relocated eastward in 10 foot increments.

SCD During the building permit plancheck process, the applicant shall demonstrate that the chain link fence and posts within five (5) of the bluff edge can be removed by cutting the posts at grade without removing the post footings. If the posts can not be cut at grade, the applicant shall submit a geotechnical letter from Christian Wheeler Engineering, or any professional certified engineering geologist, to the Planning and Building Department for review and approval, prior to issuance of building permit indicating that the removal of the chain link fence post footings within five (5) of the bluff edge will not adversely affect the slope stability of the bluff. Removal of the fence shall be completed prior to final inspection approval. If the fence posts can not be cut to grade and if removal of the fence posts would affect the slope stability then solely the chain link portion shall be removed.

G1 **STANDARD CONDITIONS:**

CONTACT THE PLANNING AND BUILDING DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- G2 This approval may be appealed to the City Council within 15 calendar days from the date of this approval in accordance with Chapter 1.12 of the Municipal Code.
- G3 This project is located within the Coastal Appeal Zone and may be appealed to the California Coastal Commission pursuant to Coastal Act Section 30603 and Chapter 30.04 of the City of Encinitas Municipal Code. An appeal of the Planning Commission's decision must be filed with the Coastal Commission within 10 days following the Coastal Commission's receipt of the Notice of Final Action. Applicants will be notified by the Coastal Commission as to the date the Commission's appeal period will conclude. Appeals must be in writing to the Coastal Commission, San Diego Coast District office.
- G4 Prior to **building permit issuance**, the owner shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Planning and Building Director. The Owner(s) agree, in acceptance of the conditions of this approval, to waive any claims of liability against the City and agrees to indemnify, hold harmless and defend the City and City's employees relative to the action to approve the project.

- G5 Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.
- G7 Prior to issuing a final inspection on framing, the applicant shall provide a survey from a licensed surveyor or a registered civil engineer verifying that the building height is in compliance with the approved plans. The height certification/survey shall be supplemented with a reduced (8 1/2" x 11") copy of the site plan and elevations depicting the exact point(s) of certification. The engineer/surveyor shall contact the Planning and Building Department to identify and finalize the exact point(s) to be certified prior to conducting the survey.
- G12 Prior to any use of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Planning and Building Department.
- G13 The applicant shall pay development fees at the established rate. Such fees may include, but not be limited to: Permit and Plan Checking Fees, Water and Sewer Service Fees, School Fees, Traffic Mitigation Fees, Flood Control Mitigation Fees, Park Mitigation Fees, and Fire Mitigation/Cost Recovery Fees. Arrangements to pay these fees shall be made prior to **building permit issuance** to the satisfaction of the Planning and Building and Engineering Services Departments. The applicant is advised to contact the Planning and Building Department regarding Park Mitigation Fees, the Engineering Services Department regarding Flood Control and Traffic Fees, applicable School District(s) regarding School Fees, the Fire Department regarding Fire Mitigation/Cost Recovery Fees, and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.
- G19 Garages enclosing required parking spaces shall be kept available and usable for the parking of owner/tenant vehicles at all times.
- L5 All masonry freestanding or retaining walls visible from points beyond the project site shall be treated with a protective sealant coating to facilitate graffiti removal. The sealant shall be of a type satisfactory to the Engineering and Planning and Building Departments. The property owner shall be responsible for the removal in a timely manner of any graffiti posted on such walls.
- DR1 Any future modifications to the approved project will be reviewed relative to the findings for substantial conformance with a design review permit contained in Section 23.08.140 of the Municipal Code. Modifications beyond the scope described therein may require submittal of an amendment to the design review permit and approval by the authorized agency.
- DR3 All project grading shall conform with the approved plans. If no grading is proposed on the approved plans, or subsequent grading plans are inconsistent with the grading shown on the approved plans, a design review permit for such grading shall be obtained from the authorized agency of the City prior to issuance of grading or building permits.
- BL1 Owner(s) shall enter into and record a covenant satisfactory to the City Attorney waiving any claims of liability against the City and agreeing to indemnify and hold harmless the City and City's employees relative to the approved project. This covenant is applicable to any bluff failure and erosion resulting from the development project.

- BL2 The applicant shall execute and record a covenant to the satisfaction of the Planning and Building Department setting forth the terms and conditions of this approval prior to the issuance of building permits. Said covenant shall also provide that the property owner shall be responsible for maintaining the approved structure(s) in good visual and structural condition in a manner satisfactory to the Directors of Engineering Services and Planning and Building.
- BL3 An "as-built geotechnical report" shall be submitted to the Planning and Building and Engineering Services Departments, for review and acceptance, prior to approval of the foundation inspection. The report shall outline all field test locations and results, and observations performed by the consultant during construction of the proposed structure(s), and especially relative to the depths and actual location of the foundations. The report shall also verify that the recommendations contained in the Geotechnical Investigation Report, prepared and submitted in conjunction with the application, have been properly implemented and completed.
- BL4 An "as-built geotechnical report", reviewed and signed by both the soils/geotechnical engineer and the project engineering geologist, shall be completed and submitted to the City within 15 working days after completion of the project. The project shall not be considered complete (and thereby approved for use or occupancy) until the as-built report is received and the content of the report is found acceptable by the Planning and Building and Engineering Services Departments.

B1 BUILDING CONDITION(S):

CONTACT THE ENCINITAS BUILDING DIVISION REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- B2R The applicant shall submit a complete set of construction plans to the Building Division for plancheck processing. The submittal shall include a Soils/Geotechnical Report, structural calculations, and State Energy compliance documentation (Title 24). Construction plans shall include a site plan, a foundation plan, floor and roof framing plans, floor plan(s), section details, exterior elevations, and materials specifications. Submitted plans must show compliance with the latest adopted editions of the California Building Code (The Uniform Building Code with California Amendments, the California Mechanical, Electrical and Plumbing Codes). These comments are preliminary only. A comprehensive plancheck will be completed prior to permit issuance and additional technical code requirements may be identified and changes to the originally submitted plans may be required.

F1 FIRE CONDITIONS:

CONTACT THE ENCINITAS FIRE DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- F13 ADDRESS NUMBERS: Address numbers shall be placed in a location that will allow them to be clearly visible from the street fronting the structure. The numbers shall contrast with their background, and shall be no less in height than: Four inches (4") for single family homes and duplexes; Eight inches (8") for commercial and multi-family residential buildings; and Twelve inches (12") for industrial buildings.

- F15A AUTOMATIC FIRE SPRINKLER SYSTEM - SINGLE-FAMILY DWELLINGS AND DUPLEXES: Structures shall be protected by an automatic fire sprinkler system designed and

installed to the satisfaction of the Fire Department. Plans for the automatic fire sprinkler system shall be approved by the Fire Department prior to issuance of building permit(s).

- F18 CLASS "A" ROOF: All structures shall be provided with a Class "A" roof assembly to the satisfaction of the Encinitas Fire Department.

E1 **ENGINEERING CONDITIONS:**

CONTACT THE ENGINEERING SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITION(S):

- E2 All City Codes, regulations, and policies in effect at the time of building/grading permit issuance shall apply.

EG1 **Grading Conditions**

- EG3 The developer shall obtain a grading permit prior to the commencement of any clearing or grading of the site.
- EG4 The grading for this project is defined in Chapter 23.24 of the Encinitas Municipal Code. Grading shall be performed under the observation of a civil engineer whose responsibility it shall be to coordinate site inspection and testing to ensure compliance of the work with the approved grading plan, submit required reports to the Engineering Services Director and verify compliance with Chapter 23.24 of the Encinitas Municipal Code.
- EG5 No grading shall occur outside the limits of the project unless a letter of permission is obtained from the owners of the affected properties.
- EG6 A separate grading plan shall be submitted and approved and a separate grading permit issued for the borrow or disposal site if located within the city limits.
- EG7 All newly created slopes within this project shall be no steeper than 2:1.
- EG8 A soils/geological/hydraulic report (as applicable) shall be prepared by a qualified engineer licensed by the State of California to perform such work: Such report shall be submitted and approved: **At first submittal of a grading plan.**
- EG9 Prior to hauling dirt or construction materials to any proposed construction site within this project the developer shall submit to and receive approval from the Engineering Services Director for the proposed haul route. The developer shall comply with all conditions and requirements the Engineering Services Director may impose with regards to the hauling operation.
- EG10 In accordance with Section 23.24.370 (A) of the Municipal Code, no grading permit shall be issued for work occurring between October 1st of any year and April 15th of the following year, unless the plans for such work include details of protective measures, including desilting basins or other temporary drainage or control measures, or both, as may be deemed necessary by the field inspector to protect the adjoining public and private property from damage by erosion, flooding, or the deposition of mud or debris which may originate from the site or result from such grading operations.

ED1 Drainage Conditions

- ED2A An erosion control system shall be designed and installed onsite during all construction activity. The system shall prevent discharge of sediment and all other pollutants onto adjacent streets and into the storm drain system. The City of Encinitas Best Management Practice Manual shall be employed to determine appropriate storm water pollution control practices during construction.
- ED3 A drainage system capable of handling and disposing of all surface water originating within the project site, and all surface waters that may flow onto the project site from adjacent lands, shall be required. Said drainage system shall include any easements and structures required by the Engineering Services Director to properly handle the drainage.
- ED5 The owner shall pay the current local drainage area fee prior to issuance of the building permit for this project or shall construct drainage systems in conformance with the Master Drainage Plan and City of Encinitas Standards as required by the Engineering Services Director.

ES1 Street Conditions

- ES5 Prior to any work being performed in the public right-of-way, a right-of-way construction permit shall be obtained from the Engineering Services Director and appropriate fees paid, in addition to any other permits required.
- ES6 In accordance with Chapter 23.36 of the Municipal Code, the owner shall execute and record a covenant with the County Recorder agreeing not to oppose the formation of an assessment district to fund the installation of right-of-way improvements.

EU1 Utilities

- EU4 All proposed utilities within the project shall be installed underground including existing utilities unless exempt by the Municipal Code.

ESW1 Storm Water Pollution Control Conditions

- ESW3 Best Management Practice shall be utilized for storm water pollution control to the satisfaction of the City Engineer. The surface run off shall be directed over grass and landscaped areas prior to collection and discharge onto the street and/or into the public storm drain system. If pipes are used for area drainage, inlets shall be located to allow maximum flow distance over grass and non-erodable landscape areas. A grass lined ditch, reinforced with erosion control blanket, or a rip-rap lined drainage ditch shall be used instead of a concrete ditch where feasible. Hardscaped areas and driveways shall be sloped toward grassy and landscaped areas. Driveways with a grass- or gravel-lined swale in the middle can be used if the site topography does not allow for the discharge of driveway runoff over landscaped areas. The **Grading Plan** shall identify all landscape areas designed for storm water pollution control (SWPC). A note shall be placed on the plans indicating that the modification or removal of the SWPC facilities without a permit from the City is prohibited.
- ESW9 For storm water pollution control purposes, all runoff from all roof drains shall discharge onto grass and landscape areas prior to collection and discharge onto the street and/or into the public

storm drain system. Grass and landscape areas designated for storm water pollution control shall not be modified without a permit from the City. A note to this effect shall be placed on the **Grading** plan.

ECB1 Coastal Bluff Conditions

- ECB2 In order to prevent any runoff from discharging over the coastal bluff, a drainage collection system shall be designed to intercept all the on-site runoff. The runoff shall be directed to a holding tank/wet well. The wet-well pump system shall be designed to handle a 50-year storm event and must be pumped onto a street or into a controlled storm drain system. No storm or irrigation water shall flow over the bluff edge.
- ECB3 If an automatic irrigation system is proposed for this project, it shall be designed to avoid any excess watering. The system shall also be designed to automatically shut off in case of a pipe break. Automatic shut-off system, moisture shut-off sensors, and other advanced controls will be required for the installation of an automatic irrigation system. The automatic irrigation system, shut-off systems, or any other system controls shall not be allowed within the 40-foot coastal bluff setback. Only hand-held irrigation is permitted within the 40-foot coastal bluff setback.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Patrick Krueer
Mailing Address: 7727 Hershel Avenue
City: La Jolla Zip Code: 92037 Phone: 858-551-4390

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Encinitas

2. Brief description of development being appealed:

Demolish an existing single-family residence and construct an approximately 3,962 sq. ft. two-story single-family residence on an approximately 25,832 sq. ft. blufftop lot. The residence will be setback approximately 46 ft. from the edge of the bluff and includes a second story cantilevered second floor that will extend approximately 9 ft., 2 in. into the 46 ft. geologic bluff setback area.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

629 Fourth St.
Encinitas, Ca 92024
APN 258-151-23

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

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AUG 25 2006

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-06-101

DATE FILED: 8/25/06

DISTRICT: San Diego

EXHIBIT NO. 4
APPLICATION NO.
A-6-ENC-06-101
Appeal Application of
Comm. Krueer
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: July 20, 2006

7. Local government's file number (if any): 05-068 DR/CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Salvatore Albani
629 Fourth St.
Encinitas, Ca 92024

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

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(3)

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

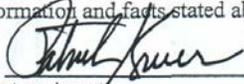
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attachment "A"

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: 9/25/06

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment "A"
Albani Appeal
August 25, 2006

The coastal permit approved by the City of Encinitas allows for the demolition of an existing single-family residence and construction of an approximately 3,962 sq. ft. two-story single-family residence approximately 25,832 sq. ft. blufftop lot. The new residence is proposed to be setback to approximately 46 feet from the bluff edge. In addition, the proposed second floor will be cantilevered approximately 9 ft., 2 in. feet into the required 46 ft. bluff setback area.

The development as approved by the City is inconsistent with Section 30.34.020(D) of the City's Certified Implementing Plan (IP) of the Local Coastal Program which requires that a geotechnical report be submitted which documents the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future".

Section 30.34.020(D) of the IP states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;

Attachment "A"
Albani Appeal
August 25, 2006
Page 2

4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
 5. Impact of construction activity on the stability of the site and adjacent area;
 6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
 7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
 8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
 9. Potential effects of seismic forces resulting from a maximum credible earthquake;
 10. Any other factors that might affect slope stability;
 11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

Attachment "A"
Albani Appeal
August 25, 2006
Page 3

- Cover all types of slope failure.
- Demonstrate a safety factor against slope failure of 1.5.
- Address a time period of analysis of 75 years.

[...]
(Emphasis added)

The project approved by the City is located within the Coastal Bluff Overlay Zone and the residence will be sited approximately 46 ft. from the edge of an approximately 90 ft.-high coastal bluff subject to marine erosion. The geotechnical report prepared for the subject development was inadequately prepared such that it cannot be determined if the proposed geologic setback of 46 ft. is adequate to meet the standards of the Section 30.34.020(D) of the City's certified IP. The appropriate setback must prevent reasonable risk of damage within the economic life of the principal structure. Thus, in order to find the appropriate geologic setback, the Certified LCP requires that not only must an adequate factor of safety of 1.5 be shown under present conditions, but that it must also demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years. In this case, the geotechnical report approved by the City only identified the factor of safety of 1.5 under present conditions and not what it will be following 75 years of erosion.

The geotechnical report approved by the City has identified through a site-specific historic erosion rate calculation that the expected erosion rate on the subject site is approximately 0.24 ft. per year. In addition, the geotechnical report identifies a potentially imminent block failure that could result in a bluff edge recession of 4 ft. Therefore, the geotechnical report estimates a bluff retreat over 75 years of approximately 24 ft. However, the geotechnical report approved by the City failed to adequately calculate a safe setback from the bluff edge because it failed to demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years during and after this estimated 24 ft. of erosion. The City only required a setback of 46 ft. because that is where an adequate factor of safety of 1.5 is located for today's conditions. However, this appears to be an insufficient distance to protect the residence over its lifetime.

Another issue raised by the development involves the City's failure to require the subject bluff face to be protected through the application of an open space easement or comparable measure. Public Safety Policy 1.6 of the City's Land Use Plan requires, in part, that:

Attachment "A"
Albani Appeal
August 25, 2006
Page 4

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[...]

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

[...]

In approving the development, the City failed to require the bluff face be conserved within an open space easement or other instrument so as to protect the bluff from future development such as a shoreline protective devices.

Finally, another issue raised by the City approval is that it allows for the construction of a new single-family residence on an illegal lot. In 1990, the City issued a Certificate of Compliance to merge three adjacent lots, a portion of a street vacation and a portion of another lot in order to create the subject approximately 25,832 sq. ft. lot. At the time of the City approval of the Certificate of Compliance, the City of Encinitas did not have a certified LCP such that all required coastal development permits were processed by the Coastal Commission. Lot mergers are considered development under the Coastal Act, however, no record of a coastal development permit for the subject lot merger has been located.

In summary, the City's approved permit for demolition of an existing home and construction of an approximately 3,962 sq. ft. two-story single family blufftop residence is inconsistent with the policies of the certified LCP relating to siting of new development so as to assure it will be safe from failure and erosion over its lifetime without requiring shoreline protection, with the policy of the certified LCP as it relates to protection of the bluff face and authorizes new development on an illegal lot.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
VOICE (619) 767-2370 FAX (619) 767-2384



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Steve Padilla
Mailing Address: Mayor's office, City of Chula Vista, 276 4th Avenue
City: Chula Vista Zip Code: 91910 Phone: 619-691-5044

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Encinitas

2. Brief description of development being appealed:

Demolish an existing single-family residence and construct an approximately 3,962 sq. ft. two-story single-family residence on an approximately 25,832 sq. ft. blufftop lot. The residence will be setback approximately 46 ft. from the edge of the bluff and includes a second story cantilevered second floor that will extend approximately 9 ft., 2 in. into the 46 ft. geologic bluff setback area.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

629 Fourth St.
Encinitas, Ca 92024
APN 258-151-23

4. Description of decision being appealed (check one.):

- Approval; no special conditions
- Approval with special conditions:
- Denial

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AUG 25 2006
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	A-6-ENC-06-101
DATE FILED:	8/25/06
DISTRICT:	San Diego

EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-06-101
Appeal Application of
Comm. Padilla
Page 1 of 7
California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: July 20, 2006

7. Local government's file number (if any): 05-068 DR/CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Salvatore Albani
629 Fourth St.
Encinitas, Ca 92024

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE Attachment "A"

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SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: [Signature]
Appellant or Agent

Date: 8/25/06

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

Attachment "A"
Albani Appeal
August 25, 2006

The coastal permit approved by the City of Encinitas allows for the demolition of an existing single-family residence and construction of an approximately 3,962 sq. ft. two-story single-family residence approximately 25,832 sq. ft. blufftop lot. The new residence is proposed to be setback to approximately 46 feet from the bluff edge. In addition, the proposed second floor will be cantilevered approximately 9 ft., 2 in. feet into the required 46 ft. bluff setback area.

The development as approved by the City is inconsistent with Section 30.34.020(D) of the City's Certified Implementing Plan (IP) of the Local Coastal Program which requires that a geotechnical report be submitted which documents the development will be stable over 75 years so as to not require "any shore or bluff stabilization to protect the structure in the future".

Section 30.34.020(D) of the IP states, in part:

APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;

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4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
 5. Impact of construction activity on the stability of the site and adjacent area;
 6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);
 7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
 8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
 9. Potential effects of seismic forces resulting from a maximum credible earthquake;
 10. Any other factors that might affect slope stability;
 11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane

analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

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- Cover all types of slope failure.
- Demonstrate a safety factor against slope failure of 1.5.
- Address a time period of analysis of 75 years.

[...]
(Emphasis added)

The project approved by the City is located within the Coastal Bluff Overlay Zone and the residence will be sited approximately 46 ft. from the edge of an approximately 90 ft.-high coastal bluff subject to marine erosion. The geotechnical report prepared for the subject development was inadequately prepared such that it cannot be determined if the proposed geologic setback of 46 ft. is adequate to meet the standards of the Section 30.34.020(D) of the City's certified IP. The appropriate setback must prevent reasonable risk of damage within the economic life of the principal structure. Thus, in order to find the appropriate geologic setback, the Certified LCP requires that not only must an adequate factor of safety of 1.5 be shown under present conditions, but that it must also demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years. In this case, the geotechnical report approved by the City only identified the factor of safety of 1.5 under present conditions and not what it will be following 75 years of erosion.

The geotechnical report approved by the City has identified through a site-specific historic erosion rate calculation that the expected erosion rate on the subject site is approximately 0.24 ft. per year. In addition, the geotechnical report identifies a potentially imminent block failure that could result in a bluff edge recession of 4 ft. Therefore, the geotechnical report estimates a bluff retreat over 75 years of approximately 24 ft. However, the geotechnical report approved by the City failed to adequately calculate a safe setback from the bluff edge because it failed to demonstrate that an adequate factor of safety of 1.5 will be maintained over 75 years during and after this estimated 24 ft. of erosion. The City only required a setback of 46 ft. because that is where an adequate factor of safety of 1.5 is located for today's conditions. However, this appears to be an insufficient distance to protect the residence over its lifetime.

Another issue raised by the development involves the City's failure to require the subject bluff face to be protected through the application of an open space easement or comparable measure. Public Safety Policy 1.6 of the City's Land Use Plan requires, in part, that:

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The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:

[...]

g. Permanently conserving the bluff face within an open space easement or other suitable instrument.

[...]

In approving the development, the City failed to require the bluff face be conserved within an open space easement or other instrument so as to protect the bluff from future development such as a shoreline protective devices.

Finally, another issued raised by the City approval is that it allows for the construction of a new single-family residence on an illegal lot. In 1990, the City issued a Certificate of Compliance to merge three adjacent lots, a portion of a street vacation and a portion of another lot in order to create the subject approximately 25,832 sq. ft. lot. At the time of the City approval of the Certificate of Compliance, the City of Encinitas did not have a certified LCP such that all required coastal development permits were processed by the Coastal Commission. Lot mergers are considered development under the Coastal Act, however, no record of a coastal development permit for the subject lot merger has been located.

In summary, the City's approved permit for demolition of an existing home and construction of an approximately 3,962 sq. ft. two-story single family blufftop residence is inconsistent with the policies of the certified LCP relating to siting of new development so as to assure it will be safe from failure and erosion over its lifetime without requiring shoreline protection, with the policy of the certified LCP as it relates to protection of the bluff face and authorizes new development on an illegal lot.

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EXHIBIT "P"

CERTIFICATE OF COMPLIANCE FOR LOT CONSOLIDATION

DESCRIPTION PLAT
SHOWING THE LOT MERGER OF LOTS, LOT 3, LOT 4 AND PORTION OF LOT 2 AND A PORTION OF E STREET IN BLOCK 40 OF ENCINITAS, MAP 14B, IN THE CITY OF ENCINITAS, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

NOTES:
HEARINGS AND DISTANCES BASED UPON RECORD DATA, ASSESSOR PARCEL NO. 258-151-13-16-17
CURRENT DEEDS: FIP 86-01159 12/29/86
FIP 89-119620 3/12/89

PREPARED AT THE REQUEST OF THEODORE H. THOMAS & CATHERINE H. LOWELL
BY JIM BLAKE, LS 47368, EXP. 5/30/93

1490

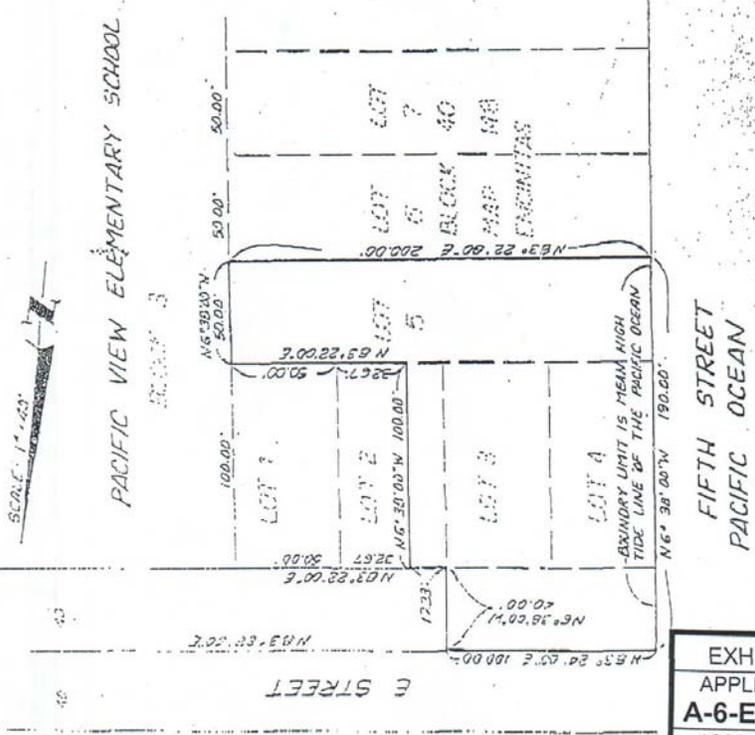


EXHIBIT NO. 6
APPLICATION NO.
A-6-ENC-06-101
1990 Certificate of Compliance Map
California Coastal Commission